

REMARKS

Claims 1-40 were pending in this Application.

In the Office Action, claims 1-40 were rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-18 of U.S. Patent No. 6,788,388 to Jeunink et al. (“Jeunink”).

In this Amendment, claims 1, 4-6, 17, 26, 29, and 37 have been amended. Claims 3 and 28 have been cancelled. Accordingly, upon entry of this Amendment, claims 1-2, 4-27, and 29-37 will be pending.

Claim 1 has been amended to include the feature recited in cancelled claim 3 of a threshold adjustor whose threshold value is varied based on the relation between a predicted property change and a measured property change (“a threshold adjustor that is configured to adjust the threshold, according to a relation between a measurement of the time-varying property and the predicted change in the time-varying property”). While claim 3 of Jeunink recites a threshold unit configured *to increase a threshold when an alignment is performed*, none of the claims of Jeunink recite a threshold adjustor configured to adjust the threshold *according to a relation between a predicted property change and measured property change*. Nor would *adjusting a threshold based on the relation between measured and predicted changes* be obvious to one of ordinary skill in the art, in light of the recited threshold determining unit configured *to increase a threshold when alignment is performed*. Accordingly, claim 1 as amended herein, is not anticipated by or rendered obvious by Jeunink, and therefore does not fall within the scope of the judicially created doctrine of non-statutory obviousness type double patenting. Because claim 1, as amended herein, merely incorporates the limitations of claim 3, which was previously

before the Examiner, no new issues are raised. Accordingly, Applicants respectfully request that the amendment to claim 1 be entered despite the “final” designation given to the rejection. Applicants respectfully submit that upon entry of this Amendment, claim 1 will be in condition for allowance.

Likewise, claim 17 has been amended to include the limitations of claim 3, wherein an adjustor is configured to “adjust a threshold according to a relation between a measurement of the time-varying property and the predicted change in the time-varying property.” Accordingly, claim 17 as amended herein, is not anticipated by or rendered obvious by Jeunink, and therefore does not fall within the scope of the judicially created doctrine of non-statutory obviousness type double patenting. Applicants therefore respectfully request that the amendment to claim 17 be entered despite the “final” designation given to the rejection. Applicants respectfully submit that upon entry of this Amendment, claim 17 will be in condition for allowance. In addition, as a result of their dependence on an allowable claim, claims 2, 4-16, and 18-25, should be in allowable condition upon entry of this Amendment.

Claim 26, as amended herein to include the limitations of dependent claim 28, recites a method for device manufacturing that includes a step of adjusting the threshold value in accordance to a relation between a measurement of the time-varying property and a value based on a predicted change. While claim 9 of Jeunink recites a method that includes *carrying out alignment when a detected value exceeds a threshold*, no claims in Jeunink recite, nor fairly suggest to one of ordinary skill in the art, such a step of adjusting the threshold value in accordance to a relation between a measurement of the time-varying property and a value based on a predicted change. Therefore, Applicants submit that claim 26, as currently amended, is not anticipated by or rendered obvious by Jeunink. Claim 26 therefore does not fall within the scope

of the judicially created doctrine of non-statutory obviousness type double patenting. Applicants further note that claim 26, as amended herein, merely incorporates the limitations of claim 28, which was previously before the Examiner, such that no new issues are raised. Accordingly, Applicants respectfully request that the amendment to claim 26 be entered despite the “final” designation of the rejection. Based on the above, Applicants submit that, upon entry of this Amendment, claim 26 and all the dependent claims thereto should be in allowable condition. Additionally, for substantially the same reasons as apply to claim 26, amended claim 37 (as well as dependent claims 38-40), which also recites a device manufacturing method, should be in allowable condition.

In view of the foregoing all of the claims in this case are believed to be in condition for allowance. Should the Examiner have any questions or determine that any further action is desirable to place this application in even better condition for issue, the Examiner is encouraged to telephone applicants’ undersigned representative at the number listed below.

Please charge any fees associated with the submission of this paper to Deposit Account Number 03-3975. The Commissioner for Patents is also authorized to credit any over payments to the above-referenced Deposit Account.

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